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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,624	02/27/2004	Troy L. Cooper	17319	6525

26637 7590 03/20/2007

CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
700 STATE STREET
RACINE, WI 53404

EXAMINER	
MCGOWAN, JAMIE LOUISE	
ART UNIT	**PAPER NUMBER**
3671	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/788,624	COOPER ET AL.	
	Examiner	Art Unit	
	Jamie L. McGowan	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 5-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

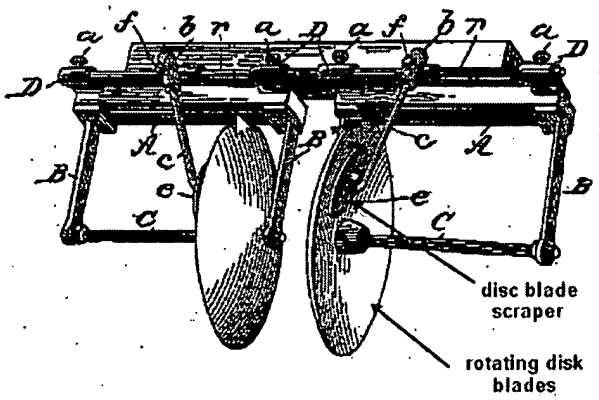
Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-3,5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer et al. (523,508) in view of Bucknam (1,663,239).

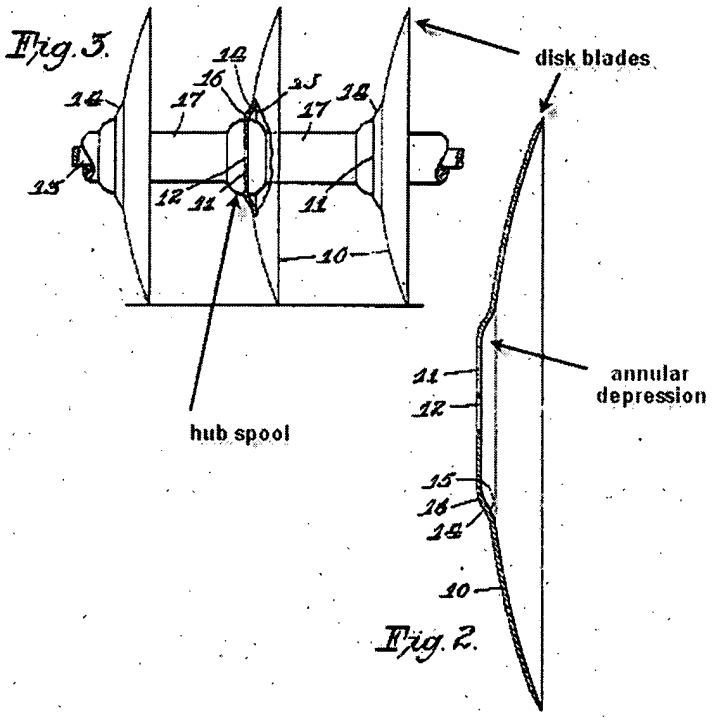
Bauer et al. discloses a disk blade scraper having a bracket (c) connected to the frame and a rotating disk (e) mounted to the bracket and having an axis of rotation and a circumference parallel to the axis of rotation. The bracket is connected to the frame and the rotating disk is mounted to the bracket such that the circumferential edge of the rotating disk is adjacent the transition joint of the disk (intersection of disks and shaft C) and the entirety of the rotating disk is capable of being received in the cavity. Bauer et al., however lacks showing the rotating disk blade including an annual depression relative to the concave surface, surrounding the transition joint.



Bucknam teaches that a disk blade including an annual depression surrounding the transition joint is an equivalent structure known in the art. Therefore, because these two disk blades were art-recognized equivalents at the time the invention was made, one or ordinary skill in the art would have found it obvious to substitute the disk blades of Bucknam for the disk blades of Bauer et al..

3. Claims 1-3,5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bucknam (1,663,239) in view of Bauer et al. (523,508).

Bucknam discloses a tillage implement including rotating disk blades arranged in laterally spaced relationship on a shaft, including a hub spool, transition joint and an annular depression. Bucknam however lacks a rotating disk blade scraper.



Bauer et al. teaches that it is known in the art to use a disk blade scraper with a tillage implement to keep the disk blades clean.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bucknam with rotating disk blade scrapers mounted to a bracket connected to a frame as taught by Bauer et al., to keep the disk blades of Bucknam clean.

Response to Amendment

4. The amendment filed on 12/07/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Bauer et al. and Bucknam references.
The amendment filed adds the limitations that the concave-shaped surface defines a cavity and the rotating disk is received entirely within the cavity. The Bauer et al. Patent, however, reads on this limitation. Bauer et al. discloses that the rotating disk can be adjusted along shank c thereby moving it closer to or farther away from the disk blades. It appears in Figure 1 that the entirety of the rotating disk is within the concave portion of the disk blades, however should applicant argue that the entirety of the rotating disk is not within the concave portion, it is noted by the examiner that should the user adjust the rotating disk along shank (c) (lines 59-62), moving to the side of the axle (C), the angle at which the shank (c) is disposed would cause the rotating disk to move even further within the concave portion than it is already disposed in Figure 1.

Response to Arguments

5. Applicant's arguments filed 12/07/2006 have been fully considered but they are not persuasive.

6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, both disk blades are art-recognized equivalents and as such one of ordinary skill in the art at the time the invention was made would have found it obvious to substitute the disk blades for each other in the case of Bauer et al. in view of Bucknam. Further, in the case of Bucknam in view of Bauer et al. it would have been obvious to one of ordinary skill in the art at the time the invention was made to include

the disk cleaners of Bauer et al. in the invention of Bucknam to keep the disk blades clean

7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Applicant argues that neither of the teachings "shows or suggests the exact arrangement of elements of the disk blade scraper of the present invention." The combination of references, however, show that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the rotating disks of Bauer et al. in the invention of Bucknam or substitute the disk blades of Bauer et al. for the disk blades of Bucknam as described above.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie L. McGowan whose telephone number is (571)272-5064. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamie L. McGowan
March 15, 2007

Thomas B. Will
Supervisory Patent Examiner
Group 3600